

The Honorable Ricardo S. Martinez

IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,	)	
	)	Case No. 2:15-cv-00102 RSM
Petitioner,	)	
	)	<b>UNITED STATES' RESPONSE TO</b>
v.	)	<b>NOTICE OF RELATED CASES</b>
	)	
MICROSOFT CORPORATION, <i>et al.</i>	)	
	)	
Respondents.	)	
_____	)	

The United States, through undersigned counsel, hereby responds to Microsoft's notice of related cases (Dkt #28), pertaining to:

The notice Microsoft filed simply recites that the newly filed *Microsoft Corporation v. Internal Revenue Service*, 2:15-cv-00369 (W.D. Wash.) – which Microsoft acknowledges is a FOIA case – relates to this case because both cases allegedly “concern the IRS’s examination of Microsoft’s 2004 through 2006 taxable years,” and “an unduly burdensome duplication of labor and expenses appears likely if these cases are conducted before different judges.”

United States' Response to  
Notice of Related Cases

**U.S. Department of Justice**  
Ben Franklin Station  
P.O. Box 683  
Washington, D.C. 20044-0683

1 Contrary to Microsoft's assertion, however, the cases are not "related" either legally or  
2 factually within the meaning of LR 3(f), and there is thus no need for the new FOIA case to be  
3 assigned to the same judge as the two pending summons enforcement cases.

4 The two summons actions pending before this Court arise out of the IRS's efforts to  
5 obtain summoned information – documents and testimony, from Microsoft and from third parties  
6 – in order to complete its examination of Microsoft's 2004 through 2006 taxable years.  
7 Summons actions, as the Court is well aware, are governed by the Internal Revenue Code (title  
8 26), and more specifically by §§ 7602 *et seq.*, which specifically address the IRS's summons  
9 power.

10 By contrast, a FOIA case is governed by the Freedom of Information Act, 5 U.S.C. § 552,  
11 and deals with a person's request to obtain information from a government agency. Microsoft is  
12 attempting to obtain documents from the IRS. But the documents it is seeking are – from the  
13 face of its pleadings – documents generated or maintained by the IRS, not documents pertaining  
14 to Microsoft's tax liability.

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Washington, D.C. 20044-0683

1 Dated this 12th day of March, 2015.

2 CAROLINE D. CIRAULO  
3 Acting Assistant Attorney General

4 /s/ Noreene Stehlik

5 /s/ Jeremy Hendon

6 /s/ Amy Matchison

7 NOREENE STEHLIK

8 Senior Litigation Counsel, Tax Division

9 JEREMY HENDON

10 AMY MATCHISON

11 Trial Attorneys, Tax Division

12 U.S. Department of Justice

13 P.O. Box 683, Ben Franklin Station

14 Washington, DC 20044-0683

15 Email: [Noreene.C.Stehlik@usdoj.gov](mailto:Noreene.C.Stehlik@usdoj.gov)

16 [Jeremy.Hendon@usdoj.gov](mailto:Jeremy.Hendon@usdoj.gov)

17 [Amy.T.Matchison@usdoj.gov](mailto:Amy.T.Matchison@usdoj.gov)

18 [Western.TaxCivil@usdoj.gov](mailto:Western.TaxCivil@usdoj.gov)

19 Telephone: (202) 514-6489

20 (202) 353-2466

21 (202) 307-6422

22 ANNETTE L. HAYES

23 Acting United States Attorney

Western District of Washington

*Attorneys for the United States of America*

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**CERTIFICATE OF SERVICE**

IT IS HEREBY CERTIFIED that service of the foregoing has been made this 12th day of March, 2015, via the Court's ECF system to all parties and electronically to the following:

JAMES M. O'BRIEN  
[james.m.o'brien@bakermckenzie.com](mailto:james.m.o'brien@bakermckenzie.com)

ROBERT B. MITCHELL  
[robert.mitchell@klgates.com](mailto:robert.mitchell@klgates.com)  
[dawnelle.patterson@klgates.com](mailto:dawnelle.patterson@klgates.com)

DANIEL A. ROSEN  
[daniel.rosen@bakermckenzie.com](mailto:daniel.rosen@bakermckenzie.com)

/s/ Amy Matchison  
AMY MATCHISON  
Trial Attorney, Tax Division  
U.S. Department of Justice

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